

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

**JACK D. McCULLOUGH,**

Plaintiff,

v.

**ILLINOIS STATE POLICE AGENT  
BRION HANLEY, et al.,**

Defendants.

No.: **17-cv-50116**

Honorable Frederick J. Kapala  
Courtroom 5300

Magistrate Judge Iain D. Johnston  
Courtroom 5200

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**DEKALB DEFENDANTS' MOTION FOR A PROTECTIVE ORDER**

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NOW COME Defendants, Clay Campbell, Victor Escarcida, Julie Trevarthen, and William Engerman (hereinafter "DeKalb Defendants"), by and through their attorneys, Ekl, Williams & Provenzale LLC, and pursuant to Federal Rule of Civil Procedure 26(c)(1), move this Court to enter a protective order regarding the location of the DeKalb Defendants' depositions. In support thereof, the DeKalb Defendants state as follows:

1. The DeKalb Defendants' depositions are scheduled to proceed over the next two months. The first DeKalb Defendant deposition to proceed will be Defendant Clay Campbell on October 23, 2018.
2. Defendant Clay Campbell resides in Sycamore, Illinois. Defendants Julie Trevarthen and Victor Escarcida reside in St. Charles, Illinois. Defendant William Engerman resides in Geneva, Illinois.
3. Plaintiff's counsel's office is located at 311 N. Aberdeen in Chicago.

4. While the exact travel time to Plaintiff's counsel's office cannot be determined given the amount of unknown variables, including construction and traffic, it is a conservative estimate that the DeKalb Defendants would have to travel between 4 and 5 hours round trip to attend depositions at Plaintiff's counsel's office.<sup>1</sup> Furthermore, based on the undersigned counsel's personal experience, there is little, to no, available parking in the vicinity of Plaintiff's counsel's office.

5. Therefore, on September 24, 2018, counsel for the DeKalb Defendants requested that Plaintiff's counsel agree to depose the DeKalb Defendants in either DeKalb County or Kane County. Alternatively, counsel for the DeKalb Defendants proposed that the depositions take place at their office in Lisle, Illinois. The office for the DeKalb Defendants' counsel is at 901 Warrenville Rd., Lisle, which is approximately the halfway point between Plaintiff's counsel's office and the DeKalb Defendants. *See email communications, attached as Exhibit A.*

6. On September 25, 2018, Plaintiff's counsel asked the DeKalb Defendants to "reconsider their objection" because it was important for Plaintiff's counsel to have access to his file during the depositions. *See Exhibit A.* In response, counsel for the DeKalb Defendants requested to schedule a conference with Plaintiff's counsel to discuss the matter. *See Exhibit A.* Plaintiff's counsel did not respond to the request.

7. On September 27, 2018, during a court appearance, the issue of the location of the DeKalb Defendants' depositions was raised with the Court. At that time, Plaintiff's counsel indicated that she objected to the depositions occurring at a location other than her office because

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<sup>1</sup> Based current travel conditions, including construction on I-88, it is counsel's experience that in the morning rush time hours, travel from Sycamore to Chicago would take no less than 3 hours.

of the need able to print off exhibits during the deposition.

8. Plaintiff's counsel's objection to taking the DeKalb Defendants' depositions at any location other than their office is not well founded. This case involves many out-of-state witnesses, including out-of-state Defendants, and Plaintiff's counsel has clearly not had any trouble traveling with deposition exhibits or accessing his file electronically while out of his office.<sup>2</sup>

9. On October 15<sup>th</sup>, counsel for the DeKalb Defendants left Plaintiff's counsel a message to discuss this matter further. That message was not returned as of the filing of this Motion.

10. On October 15<sup>th</sup>, counsel for the DeKalb Defendants also made another request by email that their depositions be taken in DeKalb County, Kane County, or their counsel's office in Lisle, IL.

11. Subsequently, Plaintiff's counsel sent a notice of deposition indicating that all of the DeKalb Defendants' depositions were taking place at his office. *See Exhibit B.*

12. Federal Rule of Civil Procedure 26(c)(1) permits the court to regulate discovery by imposing specifying terms, including "time and place" for discovery. It is within the discretion of the court to determine where a deposition should be conducted. *Undraitis v. Luka*, 142 F.R.D. 675, 676 (N.D. Ind. 1992). The court may, for good cause, issue a protective order to protect a party from "annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).

13. It would be incredibly burdensome for each of the DeKalb Defendants to undertake 4 to 5 hours of travel and a 7 hour deposition in one day. However, taking the depositions at the office of the DeKalb Defendants' counsel would cause no burden to Plaintiff and very little, if any,

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<sup>2</sup>Plaintiff's counsel has also agreed to take the depositions of three ISP Defendants at the Attorney General's Office

inconvenience to Plaintiff's counsel.

14. Additionally, Defendant Campbell has a medical condition that would prevent him from both traveling 5 hours and attending a 7 hour deposition in one day. In May of 2018, Defendant Campbell suffered a heart attack and is currently on medication for issues related to his heart. Therefore, if Defendant Campbell is required to attend a deposition at Plaintiff's counsel's office, he will necessarily have to make overnight accommodations at a location in the vicinity of Plaintiff's counsel's office. This is an unreasonable and undue burden that is completely avoidable with the reasonable compromise proposed by the DeKalb Defendants.

WHEREFORE, Defendants, Clay Campbell, Victor Escarcida, Julie Trevarthen, and William Engerman, respectfully request that this Honorable Court order that the depositions of Clay Campbell, Victor Escarcida, Julie Trevarthen, and William Engerman occur at a location in DeKalb County, at a location in Kane County, or at the office of Ekl, Williams & Provenzale, LLC.

Respectfully submitted by:

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